

SUPREME COURT DECIDES AGAINST THE WILSONS

Messrs. Caldwell and Pearson
Put in Possession of the
Office and Assume the Du-
ties of the Railroad
Commissioners.

JUSTICE DOUGLASS WROTE
THE OPINION; WAS CON-
CURRED

In by all the Justices Save Chief Justice
Faircloth, who Granted a Writ of Error
—It Now Goes to the United States Su-
preme Court—Hearing to be held in
Washington, January 20th.

Thursday, Dec. 23.—The Supreme
Court rendered decisions in the cases
of J. C. Caldwell vs. J. W. Wilson
and J. H. Pearson vs. J. W. Wilson,
for officers of Railroad Commission-
ers, deciding in favor of Messrs.
Caldwell and Pearson, the appointees
of the Governor.

The opinion was written by Justice
Douglass, the other Justices con-
curring. Chief Justice Faircloth,
who filed a dissenting opinion. He
held that the Governor did not have
the right to remove the two Wilsons.
Chief Justice Faircloth refused to
sign the judgment of the Court. The
Chief Justice always signs the judg-
ments for the Court and his failure
to sign this judgment was something
unusual.

Judge Clark, the next oldest Jus-
tice on the bench in point of service,
signed the judgment at the instance
of a majority of the members of the
Court.

At 6 o'clock Capt. W. H. Day,
counsel for Caldwell and Pearson,
appeared in the office of the Clerk of
the Court, Col. Thos. S. Kennan, and
asked for a writ of execution. A writ
was immediately issued to put Messrs.
Caldwell and Pearson in possession
of the office.

The order was immediately placed
in the hands of Sheriff Jones for ex-
ecution.

Before the writ could be executed
Mr. R. O. Barton and ex-Judge Spier
Whitaker, counsel for the Wilsons,
obtained from Clerk Riddick, of the
United States Circuit Court, a writ
of error and certiorari, which com-
pelled the case to the Supreme Court
of the United States on appeal. The
writ of error was sanctioned by Chief
Justice Faircloth, and in this way it
was secured.

No other Justice of the Supreme
Court could have issued a writ of er-
ror and thereby remove the case to
the Supreme Court of the United
States. The Chief Justice alone has
that prerogative.

A bond of \$4,000 was required to
carry the case on appeal to the
United States Court. This the
Messrs. Wilson gave, Col. J. S. Carr,
H. C. Brown and two of Maj. Wil-
son's sons going on as bondsmen.

Caldwell and Pearson in Possession.
It was nearly midnight before an
entrance to the Railroad Commission
office was effected and then only by
having a locksmith pick the lock.
Messrs. Caldwell and Pearson are
now in possession of the office.

JUDGE DOUGLASS' OPINION.
In the course of his decision Judge
Douglass cites a great number of
authorities. The objections urged
against the law under which the
Governor acted are each taken up
and discussed at length. Touching
the Federal question, the opinion
says:

"We are entirely unable to see
any Federal question whatever in-
volved in this action. The office of
Railroad Commissioner, from which
the defendant has been suspended,
is an office existing solely under the
constitution and laws of this State,
and created to administer the Rail-
road Commission act.

"It has no recognition in the laws
of the United States, does not in-
terfere with interstate commerce,
and is concerned solely in domestic
affairs and internal trade. The de-
fendant was not deprived of due
process of law. He was cited to ap-
pear and answer certain charges, and
he did appear and answer them. The
written notice of the Governor,
which was admittedly received and
acted upon by the defendant, was in
effect a citation, and under the cir-
cumstances had all the force of a
summons. The court is not bound
to bring the defendant into court
into court by giving him legal no-
tice, and if he voluntarily appears,
without limiting his appearance, he
is held to waive a summons, and is
as completely in court as if it had
been served. The court or any
other tribunal having jurisdiction of
the subject matter, has therefore
complete jurisdiction of the per-
son."

"In the case at bar there can be
no question of the right of the Gov-
ernor to appoint the plaintiff if a va-
cancy legally existed. Foster vs.
Kansas, 112 U. S. 201, 204. The
only question really at issue is the
legality of the removal of the de-
fendant, and in this view the State
of North Carolina is the real party
in interest, as it is her act, through
her chief executive, of which the de-
fendant complains. The State has
surely as much interest in having
her laws properly administered by
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matter committed to his determina-
tion by the constitution and laws of
this State. It is at least of equal
dignity with a tax sale certificate,
whose title is held to be evidence
of title in all courts, and conclusive
as to many of the facts there-
leged. De Freville vs. Smalls, 98 U.
S. 517, 524.

"The defendant has not been
deprived of access to the courts. In
fact, he does not attempt to ap-
peal from the action of the Gov-
ernor nor seek the aid of the
courts, but forcibly retained posses-
sion of an office from which he had
been rightfully suspended, and forced
the plaintiff to seek redress in this
action. The Governor, in his suspen-
sion of the defendant, recognized the
defendant to have its legality
tested in the courts, and made no at-
tempt to dispossess him. The plain-
tiff has sought possession only by
the law of the land, as shown by the
bringing of this action."

"The defendant may well be
deemed to have waived his right to
trial by jury, and such right how-
ever had, by a court of competent
jurisdiction, is not a matter of course
statute which expressly provided that
he might be suspended by the Gov-
ernor without reference to a jury."

"We see no error in the trial of the
action in the court below, and we af-
firm the judgment after a full hearing
of the defendant's protest."

"The defendant herein was not
suspended by the Governor as a pun-
ishment for any crime, but simply
with a legal disqualification. The
object of his suspension pending a
legislative determination was to pre-
vent the danger and scandal of a
pending important official duties per-
formed by one legally disqualified. The
Railroad Commission was constitu-
ted by the Legislature in obedience
to the popular demand, and the
people have a right to require that
the men charged with the grave
duty of deciding between them and
the great transportation companies,
which practically control the com-
munication, should be absolutely
free from slightest suspicion of
interest or bias. Such a require-
ment is based upon the highest prin-
ciple of public policy, and is no more
unreasonable than to say that a clerk
should not be bound for the faithful
performance of his duties by a
trustee or a trustee cannot
buy at his own sale, and that a judge
shall not sit in his own case."

The court very properly, the opinion
goes on to say, refused to allow
any issues to be submitted to the
jury. "There are no disputed facts be-
fore the jury. It is not denied that
the Governor notified the defendant
to appear and answer; that the de-
fendant did so appear and answer;
that the Governor subsequently sus-
pended the defendant, giving him
written notice of said action and ap-
pointing the relator; that the relator
only qualified, demanded possession
of the office, was refused by the de-
fendant, and then entered it."

"There was absolutely nothing to
go to the jury unless the court want
behind the action of the Governor,
which we think could not be reviewed
by the court. The suspension by the
Governor was a legal act, and the
defendant's rights which were sus-
pended were not his full pay from
the time of his suspension. The duty
of suspension was imposed upon the
Governor from the highest mo-
tives of public policy, to prevent the
danger to the public interests which
might arise from leaving such great
powers and responsibilities in the
hands of men legally disqualified.
To leave them in full charge of their
office until the next biennial session
of the Legislature would be to en-
danger the public interests for years,
which would destroy the very object
of the law. As the Governor was,
therefore, by the very letter and spir-
it of the law, required to act and act
promptly, necessarily upon his own
findings of fact, we were compelled to
hold that such official action was,
under the circumstances, due process
of law. Even if it were proper, the
Governor would have no power to dis-
miss an issue, like a chancery court."

"The defendant's action at bar
does not conflict with that in Hoke
vs. Henderson. The statute now un-
der consideration is not retrospective,
and does not interfere with any vested
right. Being a part of the act
originally passed, it is not subject to
the rule of property in said office, and
modifies the extent of interest and
tenure therein 'prospectively.' The
defendant, taking under the act,
holds subject to removal, and is bound
by all its provisions. One of its express
provisions was the reserved right of the
Legislature to remove, and the pow-
er and duty of the Governor to sus-
pend under a given state of facts.
This power of suspension, together
with the necessary method of its en-
forcement, was assented to by the
defendant."

"In Ewart vs. Jones, 116 N. C. 370,
which was an action in the nature of
a quo warranto, this court, in setting
the relator, held that under our
present Constitution the Legislature
and the power in establishing the of-
fice of judge of the criminal court, to
prescribe its powers, jurisdiction and
method of appointment of removal
and to elect the incumbent. (Chief
Justice Faircloth delivered this opin-
ion.) If the Legislature can thus
elect a judge of the criminal court
and provide for the manner of his
removal, why cannot it also elect a
Railroad Commissioner, and in the
creative act reserve to itself the right
to remove and to the Governor the
power of suspension? Two higher
agencies could not be found, one pe-
culiarly representing the will of the
people, and the other the chief ex-
ecutive of the State to whom is com-
mitted by the Constitution itself 'the
supreme executive power of the State'
and who is expressly enjoined 'to
take care that the laws are faithfully
executed.' But it is urged that the
Legislature has exceeded its consti-
tutional power in reserving the right
of removal. We think not, where
the office is of purely legislative or-
igin and administrative duties."

"It is alleged that the statute is
unconstitutional, because it requires

of the Railroad Commissioners qual-
ifications in addition to those pre-
scribed in the Constitution. We see
no merit in this contention, as such
provision was not intended, but to
secure the faithful and efficient per-
formance of public duty.
Moreover, every presumption is in
favor of the constitutionality of an
act of the Legislature, and all reason-
able doubts should be solved in its
favor."

"The constitutional objection
to the act has been largely met by
force, and has received our most
careful and serious consideration.
That objection is that the act inter-
feres with the independent tenure of
the judiciary so essential to the
proper enforcement of the law
and the protection of the citi-
zen. This Commission was com-
pared to the Criminal courts of the
State; and the danger of placing the
lives and liberties of the people in the
keeping of judges whose official
tenure might depend upon the
caprice of the Legislature, was a
certain complex of the legisla-
ture or the arbitrary will of the Gov-
ernor, was ably and eloquently por-
trayed."

"Our conclusion is that the rail-
road Commission does not stand
upon the same footing as the Crimi-
nal courts, inasmuch as it is an ad-
ministrative and not a judicial court.
While it was made by a subsequent
act of the Legislature, it was clearly
the object of the act to give it
the force and effect of its records
and proceedings, as it added nothing
to its duties or powers."

"We are of the opinion that the
disputed provisions of the act are
constitutional, and that the power of
suspension rests in the hands of the
Governor, which when exercised in
an orderly manner, is not reviewable
by the courts. Whether the action
of the Governor is justified by the
facts, which he alone could find,
is not for us to say. That the de-
fendant has not been deprived of
his property without due process of
law; that the only property he could
have in the office was that given to
him by the statute, which must be
construed in all its parts. His com-
mission, which is his title deed, ap-
pears to us with the faithful words
of the creative act written across its
face by the hand of the law. What-
ever right to a trial by jury he might
have had, was waived by his ac-
ceptance of the office under the
conditions of the statute, at least
so far as the action of the Gov-
ernor was concerned. In the court
below, as all the material facts that
were in issue were found to be
practically admitted, there was
nothing left but the bare question of
law, and upon those questions we
see no error in the ruling of the
court. The judgment must there-
fore be affirmed, but with the re-
servation that the Governor may
reopen the case upon the hearing
of the case, and under authority
of section 97 of the Code, as recog-
nized in Bernhardt vs. Brown, 118
N. C. 700, 710. The judgment will
therefore be entered that the rela-
tor is entitled to the office of Rail-
road Commissioner; that the defend-
ant be ousted therefrom, and that
the relator be placed into possession
of said office, together with all its
records and other appurtenances
thereunto belonging."

THE DISSENTING OPINION.
In dissenting Chief Justice Fair-
cloth concedes the right of the legis-
lature to abolish any office of its
own creation, "in which event the
officer goes with the office," but says
that it must not be done "upon any
notion of implied notice in the ac-
ceptance, but because the legislature
has the power to abolish any office
of its own creation, and the act of
the Governor in suspending the de-
fendant was not an executive func-
tion; but simply the act of an agent
of the legislature with such power
as they attempted to confer on their
agent. I can see no reason why the
Governor should be held to be bound
by the Secretary of State could not
well have been the agent, with di-
rections, for the causes mentioned
in the act, to suspend the Governor
from his office until the legislature
should have an opportunity to re-
move or restore him as they might
choose to do, without any hearing
for him."

"So the real question is the power
of the legislature to suspend and re-
move a judicial officer from his office
and to forfeit his property with-
out giving him a trial."
Judge Faircloth then goes on to
argue that the act is unconstitutional
and against public policy; that the
Commissioners have been deprived
of their property without due pro-
cess of law or just cause.

"The defendant specifically de-
nies each material allegation. When
brought before the Superior court
under the form of a trial, the de-
fendant demanded to hear the pre-
sents of the matters alleged, to confront
his accusers, to cross-examine, and
to introduce his own evidence, and to
have the issues determined by a
jury of his peers. These requests
were all refused by the court, and
judgment was pronounced declaring
that defendant had been duly sus-
pended from his office, and ordering
his ouster therefrom. This court is
now appealed to to affirm
judgment and approve the pro-
cedure below in this case."
"I think the plaintiff's contention
is injurious, subversive and contrary
to the organic law of our system of
government, and that it is unreason-
able and unjust, and that the de-
fendant is entitled to a trial by jury
disregarding those principles, must
soon fall under the condemnation
of the legal mind in this country."
On the following day a motion
was made by Mr. R. O. Barton,
counsel for the defendant, to set aside
the judgment of the Supreme Court
yesterday, to set aside the Supreme
Court of the United States, but the
court declined to do so.
The court held that the judgment
of the Court itself placed the rela-
tor in possession of the office at the
time the judgment was filed. The
judgment took effect immediately
upon being filed, and was not sus-
pended by the subsequent writ of er-
ror. A motion was also made by coun-

"Which is Becoming Disgusting to All Decent and Fair-
Minded Men."

Truckers and Planters' Journal.]

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limit in its effort to malign Senator Butler on account of the state-
ments attributed to him in his Rocky Mount speech. His denials
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man will accept them. We don't believe Senator Butler used the lan-
guage in the form attributed to him, and we don't believe the Democratic
press of the State believes he is capable of such language. The attack
is simply a deluge of political billingsgate, which is becoming very
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action of Senator Butler."

Approves the Caucasian's Stand.

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every branch of business. I approve
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Respectfully,
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"WHILE SICK TO THE LAST DITCH."

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will say that the statement made by
the Rocky Mount Argonaut is ab-
solutely false, and I believe a wilful
perversion.

W. H. PRICE.

Sworn to and subscribed to before
me.

J. M. SEXTON, J. P.

Fighting the People's Battles.

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I am sorry I have been so slow in
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ing our battles. Three cheers for
Senator Butler. He has done and
will do more for the common
people than any other man for his
age and the time he has been in office.
May his life be precious in the sight
of the Alwise Ruler of the universe
and may he be instrumental in His
hands in lifting the burdens that are now
pressing the poor to the earth.

MOSES STROUP.

For the People's Rights.

In the following letter THE CAUCASIAN
withholds the name and
postoffice of the writer.

"I am deeply interested in the
progress of THE CAUCASIAN to the
extent of the success of the reforms
it advocates. Long live its editor-
in-chief (The Hon. Marion Butler)
and his co-workers on the paper.
God's richest blessings rest upon
him, who is so nobly fighting for
the people's rights in the U. S. Sen-
ate, and the Hon. H. W. Ayer and
Dr. Cyrus Thompson in our beloved
State, and for the poor, who are
in a vast number, and have to move
cautiously to avoid making enemies."

Desires Annexation of Hawaii.

JACKSON, N. C., Dec. 27, '97.

I have great respect for your wis-
dom and patriotism. I sincerely
hope you will vote for the annexa-
tion of the Hawaiian Islands. They
should belong to the United States.
Nineteen out of twenty of all of the
intelligent men that I know are of
the same opinion. May God prosper
you and yours is my prayer.

Yours truly,
W. W. PERKINS.

Can't Do Without It.

HUMPHREY, N. C., Dec. 24, '97.

EDITOR CAUCASIAN:—I do not want
you to stop THE CAUCASIAN for I do
not want to miss an issue. I can't
do without it.

JACOB JAMES.

Pops all Right in Catawba.

Mr. John W. Robinson, of Hickory,

writes the following:

"Editor CAUCASIAN:—Your issue of
Dec. 23 was worth ten dollars. If I
have any left of that issue, send
me a dozen copies for general dis-
tribution."

The Pope are all right and solid in
Catawba county.

[We thank brother Click for his
kind expression of THE CAUCASIAN.
—Bus. Mgr.]

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